

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JUDY CHESSTNUTT, Individually  
and as Personal Representative of the  
Estate of RICHARD CHESSTNUTT,  
deceased,

Plaintiff-Appellant,

v

DAVID A. CRIST and SHELLY A.  
CRIST, Jointly and Severally,

Defendants-Appellees,

and

MARY LOUISE RUDZIK, HORNBECK  
REALTY, INC., and MAURICE HORNBECK,

Defendants.

UNPUBLISHED  
September 17, 1999

No. 207340  
Monroe Circuit Court  
LC No. 96-004667 NI

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Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right an order dismissing her claims against defendants David A. Crist and Shelly A. Crist. We affirm in part, reverse in part and remand.

In early 1993, plaintiff and the decedent purchased a house from defendant Rudzik, who in October 1992 had purchased the house from defendants David and Shelly Crist. After occupying the house, plaintiff and the decedent discovered several latent defects in the house's heating, plumbing, septic and electrical systems. In June 1993, Berlin Township inspectors investigated the house and confirmed that several local and/or state building code violations existed. As part of her response to defendants' motion for summary disposition, plaintiff attached several affidavits from Berlin Township inspectors detailing various plumbing, electrical and mechanical code violations and recommendations.

The house's electrical problems included improper grounding and bonding, "wiring in water under house," and open wiring. The lower court record also contained, in plaintiff's response to the Hornbeck defendants' motion for summary disposition, an affidavit of Monroe County Health Department Chief Sanitarian James R. Noerr that stated, "The Monroe County Health Department considers [the house in dispute] . . . to be unfit for human habitation due to raw sewage in the crawl space." In March 1996, plaintiff filed the instant action alleging fraud and negligence against Rudzik, the Crists, Hornbeck Realty, Inc. and Maurice Hornbeck. The issues addressed in this appeal relate only to plaintiff's claims against the Crists, which claims the trial court dismissed pursuant to a motion for summary disposition.

Plaintiff first contends that the trial court erred in dismissing her fraud claims against the Crists ("defendants"). This Court reviews the trial court's grant of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In granting defendants' motion for summary disposition, the trial court specified that the motion was granted pursuant to MCR 2.116(C)(8) and (C)(10). Because the trial court relied on materials outside the pleadings, however, we will review the decision under the standards applicable to MCR 2.116(C)(10). *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997). A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions and any other admissible evidence in favor of the party opposing the motion, grant the nonmoving party the benefit of any reasonable doubt, and determine whether there is a genuine issue of disputed material fact on which reasonable minds could differ. *Id.*; *Eerdmans v Maki*, 226 Mich App 360, 363; 573 NW2d 329 (1997).

Plaintiff's complaint alleged that defendants had fraudulently failed to disclose to Rudzik the many defects that the house possessed, and that plaintiff and the decedent had relied to their detriment on the false impression created by defendants that the house was in good condition. Plaintiff's claim of silent fraud requires a demonstration that the defendant had a legal or equitable duty to disclose the suppressed information. *United States Fidelity & Guaranty Co v Black*, 412 Mich 99, 125; 313 NW2d 77 (1981); *M&D, Inc v WB McConkey*, 231 Mich App 22, 32; 585 NW2d 33 (1998). Mere silence alone is not sufficient to constitute silent fraud. Instead, the defendant must have failed to disclose information or provided information that was misleading in response to a specific inquiry by the purchaser. *Id.* Furthermore, a claim of silent fraud also requires a showing that the defendant intended to induce the plaintiff to rely on his nondisclosure. *Clement-Rowe v Mich Health Care Corp*, 212 Mich App 503, 508; 538 NW2d 20 (1995).

Plaintiff has not demonstrated that defendants owed her or the decedent any duty to disclose information regarding the alleged defects in the house. Plaintiff has also failed to produce any evidence that defendants intended to induce subsequent purchasers of defendants' former house to rely on their nondisclosure of information to their vendee, Rudzik. Viewing the evidence in a light most favorable to plaintiff and drawing all reasonable inferences in plaintiff's favor, plaintiff failed to create a genuine issue

of material fact regarding these essential elements of her silent fraud claim, and summary disposition of the silent fraud claim was therefore appropriate.

Although plaintiff's complaint did not specifically plead a claim of fraudulent misrepresentation, plaintiff raised the issue in her response to defendants' motion for summary disposition, and the parties argued the merits of this issue at the hearing on defendants' motion. Consequently, the allegation of fraudulent misrepresentation was squarely before the trial court and properly preserved for appeal. *Hammond v Matthes*, 109 Mich App 352, 359; 311 NW2d 357 (1981).

The essential elements of a fraudulent misrepresentation claim are as follows: (1) that the defendant made a material representation; (2) that it was false; (3) that when the defendant made it the defendant knew that it was false, or that the defendant made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that the defendant made it with the intention that it should be acted on by the plaintiff; (5) that the plaintiff acted in reliance on it; and (6) that the plaintiff thereby suffered injury. *Mitchell v Dahlberg*, 215 Mich App 718, 723; 547 NW2d 74 (1996). As with plaintiff's claim of silent fraud, plaintiff's fraudulent misrepresentation claim fails because plaintiff did not provide any showing that defendants intended subsequent purchasers of their previously owned home would rely on the representations defendants made to Rudzik regarding the condition of the house. Because plaintiff failed to create a genuine issue of material fact with respect to this essential element of her fraudulent misrepresentation claim, the trial court properly granted defendants summary disposition regarding this claim pursuant to MCR 2.116(C)(10).

Plaintiff further argues that the trial court erroneously granted defendants summary disposition with respect to her negligence claim. Plaintiff asserts that defendants owed her a duty because they failed to disclose numerous hidden defects in the home to their immediate purchaser, Rudzik, who failed to discover the hidden defects herself. According to plaintiff, these defects primarily consisted of David Crist's previous "repairs." Defendants disagree, apparently relying on the principle of caveat emptor, which provides that because defendants surrendered title, possession and control of the house to Rudzik, she assumed the responsibility for all defects existing in the house at the time of the transfer from defendants.

The primary issue concerning plaintiff's negligence claim is whether defendants owed a duty to plaintiff and the decedent, subsequent purchasers of the home that defendants sold to Rudzik. Whether a defendant owes a duty to a plaintiff in a particular circumstance is a question of law. *Hughes v PMG Building, Inc*, 227 Mich App 1, 5; 574 NW2d 61 (1997). The Supreme Court in *Christy v Prestige Builders, Inc*, 415 Mich 684; 329 NW2d 748 (1982), examined the question whether vendors of real property may owe a duty to third persons other than their immediate vendees.

Under the common law, a land vendor who surrenders title, possession, and control of property shifts all responsibility for the land's condition to the purchaser. Caveat emptor prevails in land sales, and the vendor, with two exceptions, is not liable for any harm due to defects existing at the time of sale.

The first exception is the vendor's duty to disclose to the purchaser any concealed condition known to him which involves an unreasonable danger. Failure to make such a disclosure or efforts to actively conceal a dangerous condition render the vendor liable for resulting injuries. The second exception is that a vendor is liable to those outside the land for a dangerous condition on the land after the sale until the purchaser discovers or should have discovered it. Once the purchaser discovers the defect and has had a reasonable opportunity to take precautions, third parties such as subvendees have no further recourse against the vendor. Under both exceptions, then, knowledge of the defect on the part of the purchaser relieves the vendor of any duty or liability. [*Id.* at 694-695.]

In this case, several defects apparently existed at the time defendants sold the house to Rudzik. These defects included improper electrical wiring and sewage problems that would fall within the narrow exception for dangerous conditions described by the *Christie* Court. Rudzik undisputedly failed to discover any of these defects prior to conveying the house to plaintiff and the decedent because she only owned the house for several months, during which period of time the house was occupied for a brief one-month period by Rudzik's daughter, who expressed no complaints. The latent defects consisted primarily of David Crist's attempted repairs and modifications to the house, which were done in violation of building codes and/or without required permits. Rudzik averred that when she visited the house as a potential purchaser from defendants, David Crist told her that he had done extensive work on the house, including the floors and plumbing and electrical system, and that he had been fixing up houses since he was eighteen years old. Defendant also represented to Rudzik that the septic system had worked for ten years, was in great condition and would be okay. Because of the nature and location of the dangerous conditions, and given the brief, several-month time period during which Rudzik owned the house, some of which time the house was vacant, we conclude that Rudzik reasonably failed to discover the property's dangerous conditions. Therefore, in these limited circumstances, pursuant to the second exception delineated by the *Christie* Court to the general rule of caveat emptor, defendants' duty to disclose the house's latent, dangerous conditions extended to plaintiff and the decedent, third party subvendees. *Id.*

Furthermore, with respect to the first exception delineated in *Christie, supra*, it remains unclear based on the lower court record whether defendants knew that David Crist's repairs may have contributed to the house's latent defects. Therefore, the extent to which defendants knew of any unreasonably dangerous conditions in the home remains a factual determination for the jury. Accordingly, the trial court improperly granted defendants summary disposition with respect to plaintiff's negligence claim, and we must remand for further consideration of this issue.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage  
/s/ Michael R. Smolenski  
/s/ Brian K. Zahra